

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7078

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTONIUS HEIJNEN,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Anderson. G. Ross Anderson, Jr., Senior District Judge. (8:03-cr-00045-GRA-6; 8:09-cv-70038-GRA)

Submitted: January 25, 2010

Decided: March 10, 2010

Before WILKINSON, KING, and DAVIS, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Antonius Heijnen, Appellant Pro Se. David Calhoun Stephens, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Antonius Heijnen seeks to appeal the district court's order recharacterizing his petition for a writ of error coram nobis as a 28 U.S.C.A. § 2255 (West Supp. 2009) motion and dismissing it as untimely. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001).

Although we find baseless Heijnen's argument that § 2255 is not a valid statute, our review of the record reveals that the district court failed to give Heijnen notice of its intent to recharacterize his coram nobis petition as a § 2255 motion, as required by the Supreme Court's decision in Castro v. United States, 540 U.S. 375, 383 (2003). Accordingly, we grant a certificate of appealability on Heijnen's claim that the district court erred in recharacterizing his petition without

notice, vacate the district court's order, and remand for further proceedings. On remand, the district court should also consider whether notice pursuant to Hill v. Braxton, 277 F.3d 701, 707 (4th Cir. 2002), is required. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED